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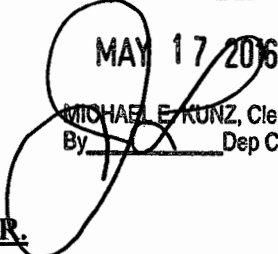
IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PARVEZ & RAZIA YAZDANI : CIVIL ACTION  
v. : NO. 2:15-cv-01427-PD  
BMW OF NORTH AMERICA, LLC :  
and :  
BMW MOTORRAD USA, a Division of :  
BMW OF NORTH AMERICA, LLC :

REPLY BRIEF IN SUPPORT OF THE  
MOTION *IN LIMINE* OF  
DEFENDANT BMW OF NORTH AMERICA, LLC  
TO PRECLUDE CERTAIN TESTIMONY  
OF PLAINTIFFS' EXPERT WILLIAM VIGILANTE, JR.

FILED

MAY 17 2016

MICHAEL E. KUNZ, Clerk  
By  Dep Clerk

Defendant BMW of North America, LLC ("BMW NA")<sup>1</sup>, filed a Motion *in Limine* to preclude Plaintiffs' human factors expert William Vigilante from offering opinions regarding motorcycle design.<sup>2</sup> Plaintiffs timely responded. BMW NA now files this Reply in support of its Motion *in Limine*.

BMW NA believes that the parties are in agreement on this issue. BMW NA understands that Dr. Vigilante expects to testify that, given the characteristics of the R1150R motorcycle as designed, the motorcycle's warnings should contain certain information, or should appear in a certain location. However, BMW NA objects to Dr. Vigilante offering independent criticisms of the motorcycle's design, along the lines of: "In my opinion, the design of the R1150R is defective because it contains [a certain feature]." As established in more detail in BMW NA's Motion *in Limine*, Vigilante lacks the qualifications to make such design opinions. See ECF

<sup>1</sup> BMW Motorrad USA is a division of BMW NA. Although it is a named defendant in this matter, it is not a separate legal entity.

<sup>2</sup> BMW NA filed a separate Daubert motion to challenge Dr. Vigilante's testimony in its entirety. However, for purposes of this Motion, BMW NA contends that, if Dr. Vigilante is permitted to testify, he should be limited to the area of his expertise.

Doc. No. 26. Further, Vigilante has not conducted any risk-utility or other design-related analysis to support such opinions.

It appears that Plaintiffs are in agreement with this proposed scope of Vigilante's testimony, as they note that Vigilante "does not plan to offer any independent opinion on the proposed alternative designs proffered by Michael Zazula" and that Vigilante will rely on others "to identify the fire hazard created by the defective design of the oil sight glass." See Plaintiffs' Response, ECF Doc. No. 42, at page 6-7 of 8. Yet their position is not quite clear inasmuch as they have filed an "opposition" to BMW NA's Motion.

To the extent that Vigilante intends to hold himself out as an expert in motorcycle design, and offer independent criticisms of the design characteristics of the R1150R, he should not be permitted to do so.

Respectfully submitted,

**MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN**

BY: /s/ Michael A. Salvati

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Reply Brief of Defendant, BMW of North America, LLC, was served this date, via the Court's electronic filing system, to the following counsel:

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**FILED**

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